

RECEIVED

APR 11 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)
Rules Governing Telephone Company)
Use of Customer Proprietary)
Network Information)

CC Docket No. ~~91-63~~
CC Docket No. 92-256
CC Docket No. 90-623

INITIAL COMMENTS
OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

PAUL RODGERS
General Counsel

CHARLES D. GRAY
Assistant General Counsel

JAMES BRADFORD RAMSAY
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

(202) 898-2200

)	
In the Matter of)	
)	
Rules Governing Telephone Company)	CC Docket No. 94-63
Use of Customer Proprietary)	CC Docket No. 92-256
Network Information)	CC Docket No. 90-623
)	

Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. Sections 1.49, 1.415, and 1.419 (1993), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following comments addressing the Commission's request for comments concerning consumer privacy expectations with respect to Customer Proprietary Network Information ("CPNI"), as adopted March 9, 1994, and released March 11, 1994, in the above-captioned proceeding:

NARUC is a quasi-governmental nonprofit organization founded in 1889. Its membership includes governmental bodies engaged in the regulation of carriers and utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. NARUC's mission is to improve the quality and effectiveness of public utility regulation in America.

More specifically, NARUC is composed of, inter alia, State and territorial officials charged with the duty of regulating the telecommunications common carriers within their respective borders. As such, they have the obligation to assure the establishment of such telecommunications services and facilities as may be required by the public convenience and necessity, and the furnishing of service at rates that are just and reasonable.

NARUC has been an active participant at every stage of the 90-623 proceedings and has filed related comments in other dockets concerning the appropriate treatment of CPNI. As State Commission's already have in place rules directly impacting CPNI distribution, the FCC's proposed action in this proceeding (i) clearly raises issues of concern to NARUC's State commission membership and (ii) could impact upon these members' ability to adhere to their respective mandates to serve the public interest.

II. BACKGROUND

As the FCC correctly states in its notice "CPNI, encompasses any information about customers' network services and their use of those services that a telephone company possesses because it provides those network services. (See Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1, 215 (1988))." The FCC already has in place rules that govern the Bell Operating Companies' ("BOCs") use of CPNI in marketing enhanced services and customer premises equipment (CPE). States have similar rules.

As noted earlier, NARUC is participating in the review of these rules in the Computer III Remand Order proceeding, CC Docket No. 90-623. In this public notice, the FCC has sought comment on customers' CPNI-related privacy expectations, and whether any changes in our rules are required to achieve the best balance between customer's privacy interests, competitive equity, and efficiency.

Under the FCC's current rules, any customer can request that its CPNI be withheld from the BOCs' enhanced services and CPE marketing personnel, although such personnel are generally allowed to make use of CPNI without prior customer authorization. Prior authorization is required only before BOC enhanced services marketing personnel are given access to the CPNI of customers with more than twenty lines. Third parties, such as independent enhanced services providers, must obtain advance authorization from the customer in order to obtain access to CPNI. The Commission's rules also require that the BOCs provide an annual written notice of CPNI rights to multiline business customers. See Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, 6 FCC Rcd 7571, 7605-14 [1991] [Computer III Remand Order]; Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, CC Docket No. 86-79, 2 FCC Rcd 143, 152-153 [1987]. At present these rules do not apply to independent telephone companies, but the Commission has decided to apply them to GTE and its enhanced services.

In recent months, local telephone companies have planned and entered into a number of alliances, acquisitions, and mergers with non-telephone company partners. According to the FCC, in this changing environment, access to CPNI among affiliated companies may raise additional privacy concerns.

NARUC has not had an opportunity to directly consider this most recent FCC request as it did not issue until after our March 1994 Winter meetings. However, previous resolutions, passed at the March 1994 and February 1991 meetings are relevant to the inquiry undertaken in this docket. Copies of these three resolutions have been attached as Appendix A for your information and use.

III. DISCUSSION

- A. CPNI rules should be expanded to include other carriers and any other service provider that can collect and sell CPNI. Prior written authorization rules should be utilized.**

NARUC agrees that the impact of competition and the introduction of new technologies and services on consumer privacy rights must be evaluated.

Title I of the recently posed "**Telephone Consumer Privacy Protection Act of 1993**", prohibits a telephone company from disclosing CPNI to anyone, including any affiliate or subsidiary of the telephone company, unless required by law or by customer request. In the bill, CPNI is then defined as information relating to quantity, destination, type of phone calls, frequency of calls, and other.

This bill also requires that the FCC be notified of the availability of aggregate or compiled CPNI whenever it is made available to an affiliate. This information must be made available to unaffiliated service providers on the same basis. The legislation exempts telcos with under one million subscribers.

In response to this bill, NARUC noted that Congress intends to apply restrictions on disclosure of CPNI only to local exchange carriers, but says nothing about interexchange carriers, electric utilities, gas companies, cable companies, alternative access service providers, and resellers and other service providers that also can collect and sell CPNI. The potential for abuse of this data is obviously not limited to local exchange carriers. Accordingly, NARUC believes "all carriers that can compile CPNI should be subject to all the privacy restrictions of this legislation and that no exemption should be given for carriers with less than 1,000,000 aggregate subscribers."

Moreover, in previous comments, citing the fact that some State regulators have seen evidence of abuse by utilities when confronted with the question of prior written notification and approval, NARUC has advocated that the FCC be "encouraged" to adopt procedures for obtaining prior written authorization from all customers prior to release of CPNI by regulated utilities.

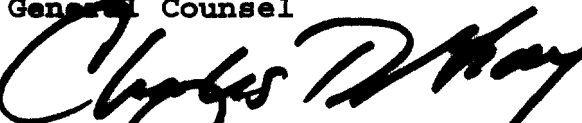
IV. CONCLUSION

NARUC respectfully requests that the FCC examine and give effect to these comments.

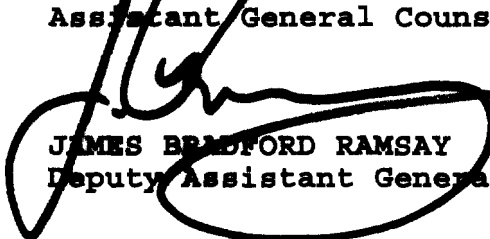
Respectfully submitted,



PAUL RODGERS
General Counsel



CHARLES D. GRAY
Assistant General Counsel



JAMES BRADFORD RAMSAY
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

(202) 898-2200

April 11, 1994

In the Matter of
Rules Governing Telephone Company Use of
Customer Proprietary Network Information

CC Docket No. 94-63
CC Docket No. 92-256
CC Docket No. 90-623

APPENDIX A

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONER'S

MARCH 1994 RESOLUTIONS

Regarding HR 3432 "Telephone Consumer Privacy Protection Act of 1993"

Adopting NARUC Federal Telecommunications Legislative Policy Principles

FEBRUARY 1991 RESOLUTION

Resolution Concerning the FCC's Notice of Proposed
Rulemaking and Order in CC Docket 90-623 Concerning the Remand of
Computer III Issues

Resolution

Regarding H.R. 3432, "Telephone Consumer Privacy Protection Act of 1993"

WHEREAS, On November 3, 1993, Congressman Ed Markey (D-MA) the Chairman of the House Energy and Commerce Subcommittee on Telecommunications and Finance introduced H.R. 3432, the "Telephone Consumer Privacy Protection Act of 1993"; and

WHEREAS, The bill has been assigned to the Committee on Energy and Commerce-Subcommittee on Telecommunications and Finance for review and markup; and

WHEREAS, Title I: Privacy of Customers Proprietary Network Information (CPNI) of the proposed legislation defines CPNI as information relating to the quantity, destination, type of phone calls, frequency of calls, and other; and

WHEREAS, Title I: Privacy of Customers Proprietary Network Information of the proposed legislation prohibits a local exchange carrier from disclosing customer proprietary information to anyone, including an affiliate or subsidiary of the telephone company, unless required by law or by customer request; requires that the FCC be notified to the availability of aggregate or compiled CPNI whenever it is made available to an affiliate and that information must be made available to unaffiliated service providers on the same basis; and

WHEREAS, Title II of the proposed legislation mandates that the FCC tariff Caller ID services within 180 days of the enactment to include free per call blocking; and

WHEREAS, Title II.C provides that common carriers provide ANI services under tariff and contract with consumer protection requirements for use and disclosure of ANI; and

WHEREAS, Title III: Access to Telephone Records of the proposed legislation requires carriers to notify customers when the carrier divulges or publishes a subscriber's billing information or the content of subscribers' communications when the carrier provides this information pursuant to a subpoena issued by a court of competent jurisdiction or on demand of other lawful authority; and

WHEREAS, The prevention and detection of toll fraud requires that carriers be able to promptly cooperate with law enforcement officials by providing them with necessary customer information, which could include "subscriber information" and "customer proprietary network information" as those terms are defined in the Bill, in cases of suspected toll fraud; and

WHEREAS, It is not clear whether carriers' divulgence of this information in compliance with the request of law enforcement officials, in the absence of a subpoena, would be permitted under the Bill; and

WHEREAS, After reviewing this proposed legislation, the NARUC has a concern with regard to Title I. First, the restrictions on disclosure of CPNI only apply to local exchange carriers, while nothing is said about interexchange carriers, electric utilities, gas companies, cable companies, alternative access service providers, and resellers or any other service provider who could collect and sell CPNI. Second, the legislation would permit the FCC to exempt local exchange carriers that do not have 1,000,000 aggregate nationwide lines if the FCC determines that such an exemption is in the public interest or if compliance with the requirements would impose an undue economic burden on the carrier; and

WHEREAS, NARUC's General Counsel and Office of Congressional Relations has sent correspondence encouraging State commissions to contact their house members and express their thoughts on this bill; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1994 Winter Meetings in Washington, D.C., believes all carriers that can compile CPNI should be subject to all the privacy restrictions of this legislation and that no exemption should be given for carriers with less than 1,000,000 aggregate subscribers; and be it further

RESOLVED, NARUC supports a clarification to the Bill to confirm that carriers may release subscriber information and customer proprietary network information upon request of law enforcement officials conducting a toll fraud investigation; and be it further

RESOLVED, That the legislation should be amended to allow individual States the right to determine the tariff provisions for the offering of Caller ID services within their borders; and be it further

RESOLVED, That NARUC generally supports the ANI provisions included in the bill as drafted; and be it further

RESOLVED, That State commissions should follow the suggestion of NARUC General Counsel to contact their House members and express their thoughts on this bill.

Resolution Adopting

NARUC Federal Telecommunications Legislative Policy Principles

WHEREAS, Telecommunications legislation has been introduced in the U.S. House of Representatives and the Senate to address such issues as local exchange competition, universal service, infrastructure development, interconnection and equal access requirements, removal of cable-telco cross ownership restrictions, modification of MFJ restrictions on BOC entry into manufacturing, interLATA services and electronic publishing and alarm services; and

WHEREAS, The Administration has stated its support for comprehensive legislation to amend the Communications Act of 1934; and

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) agrees with many of the principles on which the current legislative efforts are based; and

WHEREAS, The NARUC is concerned that the bills contain provisions that would alter the jurisdictional authority of the Federal Communications Commission and State public utility commissions in regulating interstate and intrastate communications, with some aspects of State regulation preempted and primary responsibility for other activities transferred to the FCC; and

WHEREAS, During the transition to local competition, States have a critical role to play in preserving and advancing universal service, protecting the public safety and welfare, ensuring the continued quality of telecommunications services, safeguarding the rights of consumers and providing for just and reasonable rates; and

WHEREAS, The NARUC has been and will continue to be an active participant in the Federal legislative process to ensure that the interests and views of local telephone service ratepayers in each State are fully represented; and

WHEREAS, The NARUC's Federal legislative efforts should be guided by a set of policy principles that underscore the role of State regulators in the transition to local competition; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1994 Winter Meetings in Washington, D.C., hereby adopts the NARUC Federal telecommunications legislative policy principles attached to this resolution; and be it further

RESOLVED, That NARUC use these principles to analyze and respond to Federal telecommunications legislation in the appropriate forum.

Adopted March 2, 1994

NARUC Federal Telecommunications Legislative Policy Principles

Transition to Competition

- o During the transition to competition, States must not be prevented from imposing requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, safeguard the rights of consumers and ensure that rates are just and reasonable.
- o States support removal of statutory and legal barriers to competition, but must retain the flexibility to establish the terms and conditions under which services are provided, as long as those policies are not inconsistent with Federal statutes.

- A Bell Operating Company's (BOC's) provision of intrastate, interLATA services should be subject to State approval.
- States must have the authority to enact safeguards that prevent subsidization of a local exchange carrier's (LEC's) entry into competitive markets, including, but not limited to (1) separate subsidiaries for the provision of non-basic telephone services; (2) full authority to limit and audit affiliate transactions and audit cost allocation procedures, including access to books and records; and (3) insulation of the LEC from creditors of non-regulated affiliates.
- Intrastate pricing flexibility for local exchange carriers should not be Federally mandated absent a finding that a particular market is sufficiently competitive to ensure that consumers in that market have the ability to choose among similar services and no firm or combination of firms has the ability to control the prices of those services.
- States must retain the authority to reimpose regulation should unregulated monopolies or other anti-competitive situations develop.

Universal Service

- As technology enhances telecommunications capabilities, the package of basic services that are universally available must continue to meet expanding customer needs.
- States and the FCC should work cooperatively to develop universal service criteria and standards.
- States must be permitted to continue developing and redefining universal service policies that best meet the needs of telecommunications subscribers within a particular State or region, as long as those policies are not inconsistent with Federal statutes.
- All service providers should equitably share in the responsibility for maintaining universal service.
- States must have the ability to ensure that high quality service is provided in markets that are less competitive or attractive for investment.
- Federal agencies other than the FCC should not be allowed to set "de facto" policy on universal service by virtue of their control over providers.

Network Modernization, Functionality and Quality

- The Federal Government should ensure that technical standards are developed which allow all telecommunications providers to interconnect with each other as the "network of networks" develops. However, Federal legislation should not mandate the use of a particular technology, or a specific network configuration.

- o Each State should examine its infrastructure requirements to assure consumers have access to voice, data and video through one or more networks.
- o The National Information Infrastructure should be developed primarily with private investment.

Cable-Telco

- o Cable and telephone companies providing common carrier services should operate under the same rules and bear the same responsibilities.
- o Cable and telephone companies should provide, to the extent technically feasible, nonaffiliated entities with access to their respective networks on a tariffed, nondiscriminatory and unbundled basis.
- o Cable and telephone companies must continue to be regulated to the extent they maintain monopoly power and should be prohibited from exercising that power to inhibit customer access to nonaffiliated video providers.
- o A telephone company should not acquire a significant interest in a cable system within its telephone service territory unless it continues to be regulated by a State (and the FCC) or until consumers have sufficient choices for both their telephone and cable services.
- o States and the FCC should have the authority to conduct or cause to be conducted an audit of transactions between telephone companies and their affiliates providing video services and equipment in order to ensure that cross-subsidization does not occur.

Consumer Protections

- o In the transition to competition, consumers must be informed of their service options, the functional standards for those services and the process for resolving service problems.
- o Basic consumer protections must be maintained and adequate forums must be available for resolution of consumer complaints.
- o The impact of competition and the introduction of new technologies and services on consumer privacy rights must be evaluated. Protections necessary to preserve such privacy rights should be incorporated in the design of new telecommunications services and in rules regulating such services.

Resolution Concerning the FCC's Notice of Proposed
Rulemaking and Order in CC Docket 90-623 Concerning the Remand of
Computer III Issues

WHEREAS, The Federal Communications Commission ("FCC") has issued a Notice of Proposed Rulemaking and Order ("NPRM") in CC Docket No. 90-623 regarding the remand of Computer III issues by the Ninth Circuit Court of Appeals, and

WHEREAS, The FCC has requested comments on proposals to: 1) strengthen non-structural safeguards involved in the provision of unregulated enhanced services by regulated telephone companies, 2) reevaluate safeguards on Customer Proprietary Network Information ("CPNI"), and 3) preempt State regulations differing from Federal safeguards that would thwart or impede Federal policy, and

WHEREAS, Comments to the FCC's NPRM are due on March 8, with Reply Comments due by April 8, 1991, and

WHEREAS, Many State regulatory agencies have serious concerns about the ability to control cross-subsidization of enhanced services through the use of non-structural safeguards, and

WHEREAS, Evidence exists that some regulated telephone utilities have acted in abuse of existing non-structural safeguards designed to prevent cross-subsidization between regulated and unregulated portions of the industry, and

WHEREAS, Some State regulators have seen evidence of abuse by utilities when confronted with the question of prior written notification and approval, which has implications for the provision of CPNI, and

WHEREAS, State regulators have significant and critical concerns about the FCC's proposal to preempt State policies which necessarily thwart and impede Federal policies relating to the provision of enhanced services; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its Winter Committee Meeting in Washington, D.C., directs its General Counsel to file comments in response to the FCC's NPRM, and be it further

RESOLVED, That such comments support the concept of individual State discretion with respect to the adoption of structural safeguards for the provision of intrastate enhanced services by regulated utilities, and be it further

RESOLVED, That such comments encourage States and the FCC to adopt procedures for obtaining prior written authorization from all customers prior to release of CPNI by regulated utilities, and be it further

RESOLVED, That such comments support the concept of cooperation among State and Federal regulators on the issue of Open Network Architecture and the provision of enhanced services, and that the preemption of State policies be rejected as contrary to law and good public policy for the provision of enhanced services; and be it further

RESOLVED, That independent of the FCC's decision to adopt structural safeguards versus non-structural safeguards, the FCC should, in its final order within its lawful authority, impose conditions that will assure that State regulatory agencies have full access to all books and records of all companies affiliated with the local exchange companies for the purpose of reviewing transactions dealing with enhanced services.

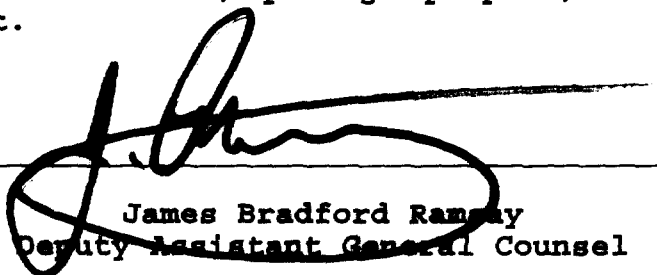
Adopted February 27, 1991

In the Matter of
Rules Governing Telephone Company Use of
Customer Proprietary Network Information

CC Docket No. 94-63
CC Docket No. 92-256
CC Docket No. 90-623

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing was sent by first class United States mail, postage prepaid, to all parties on the attached Service List.



James Bradford Ramsay
Deputy Assistant General Counsel

National Association of Regulatory Utility Commissioners

April 11, 1994